

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

The Petitioner, Clyde Raulston has filed a petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus for a person in State Custody. (Doc. #1). Respondent has answered the petition (Doc. #4) and moves to dismiss (Doc. #5). Petitioner did not respond to the Motion to Dismiss.

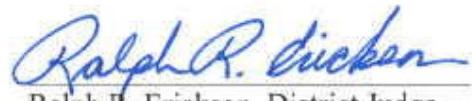
This Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, recommending that Petitioner's pending application for habeas relief be dismissed with prejudice on the grounds that this Court may not grant habeas relief on any claim adjudicated on the merits in a state court proceeding absent an applicable exception enumerated in 28 U.S.C. § 2254(d). Specifically, habeas relief cannot be granted unless the underlying state claim (1) involved an erroneous or unreasonable application of clearly established federal law as determined by the United States Supreme Court or (2) the resolution of the state claim was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. See 28 U.S.C. § 2254(d).

Petitioner alleges that habeas relief should be granted on the grounds that his guilty plea and subsequent probation violation admission were not knowingly, intelligently, and voluntarily entered and, secondly, that he was denied the effective assistance of counsel.

Upon review of the record and the pleadings, this Court finds that Magistrate Judge Klein correctly concluded that neither exception enumerated in U.S.C. 2254(d) is applicable in the instant case. This Court thus adopts the report and recommendation in its entirety. Petitioner's petition under Section 2254(d) is hereby **DISMISSED** with prejudice and respondent's motion to dismiss is hereby **GRANTED**.

IT IS SO ORDERED.

Dated this 14th day of June, 2006.



Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court